

STEVEN W. CALL (5260)
RAY QUINNEY & NEBEKER P.C.
36 South State Street, Suite 1400
P.O. Box 45385
Salt Lake City, Utah 84145-0385
Telephone: (801) 532-1500
Email: scall@rqn.com

Attorneys for Westminster TIC Holders

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF UTAH**

In re:

NOAH OPERATIONS RICHARDSON TX,
LLC; NOAH OPERATIONS
SUGARLAND TX, LLC; NOAH
OPERATIONS CHANDLER AZ, LLC; and
NOAH CORPORATION,

Debtors.

Bankruptcy Case No. 19-23492
Bankruptcy Case No. 19-23571
Bankruptcy Case No. 19-23810
Bankruptcy Case No. 19-23840
(Jointly Administered)

Chapter 11
Honorable Joel T. Marker

(Filed via ECF)

**EX PARTE MOTION PURSUANT TO FEDERAL RULE OF BANKRUPTCY
PROCEDURE 2004 AND LOCAL RULE 2004-1 FOR AN ORDER AUTHORIZING THE
EXAMINATION AND COMPELLED PRODUCTION OF DOCUMENTS**

(FIRST AMERICAN TITLE INSURANCE COMPANY)

Pursuant to Rules 2004 and 4002 of the Federal Rules of Bankruptcy Procedure and Local Rule 2004-1, the Westminster TIC Holders as identified below hereby move ex parte for an order authorizing the examination of a representative and the production of documents from First American Title Insurance Company ("First American"). In support thereof, the Westminster TIC Holders state and represent as follows:

WESTMINSTER TIC OWNERS

The Westminster TIC Owners are comprised of the following persons holding the specified ownership percentages:

- (a) Victor M. Szurgot Jr., as trustee of the Victor M. Szurgot Jr., Grantor Trust dated Sept 24, 1992 and Linda J. Szurgot, as trustee of the Linda J. Szurgot Grantor Trust dated Sept. 24, 1992 (15.04%);
- (b) Keith E. King (13.07%);
- (c) TYtanium 4, LLC (9.64%);
- (d) William B. Maloney (4.56%);
- (e) Douglas S. Peterson (5.33%);
- (f) The Lowell S. & Kathleen S. Peterson Intervivos Trust (5.15%);
- (g) Dana Barron (4.54%);
- (h) Geither Enterprises, Inc. (Toot, Inc.) (8.22%);
- (i) MDB Ventures LLC (3.65%);
- (j) JDB Holdings LLC (3.65%);
- (k) Kent S. Seymour and Donna G. Seymour Family Trust (9.12%);
- (l) Kathie Muhler Revocable Trust (4.24%);
- (m) Noah Rockwell LLC (7.41%); and
- (n) Eldridge Holdings TOO LLC (6.38%).

The foregoing list of the Westminster TIC Holders is also included in counsel's Notice of Appearance and Request for Notice filed on July 22, 2019, as Docket No. 143 in the above-captioned jointly administered case.

RELIEF REQUESTED

A. An order directing a representative of First American, specifically Kirsten L. Parkin, the escrow agent involved in the relevant title and escrow transactions, to appear and submit to an oral examination, to be taken under oath before a certified court reporter, at the law

offices of Ray Quinney & Nebeker P.C., located at 36 South State Street, Suite 1400, Salt Lake City, Utah, on **September 26, 2019 at 10:00 a.m.** and continuing thereafter until completed. A list of topics to be discussed at the examination is attached as **Exhibit A**.

B. An order directing First American to produce for inspection and copying at the law offices of Ray Quinney & Nebeker, P.C., at the address of 36 So. State Street, Suite 1400, Salt Lake City, Utah (the “**Production Site**”), all records and documents identified on **Exhibit B** attached hereto, in accordance with the definitions and instructions contained in **Exhibit C** attached hereto on or before close of business on **September 18, 2019**. If certain documents or electronic records are incapable of being produced for copying and inspection at the Production Site on the date and at the time indicated, First American should be required to provide access to such documents or electronic records in the location where they generally are stored at an earlier date and time convenient to the parties.

BASIS FOR RELIEF REQUESTED

1. In 2011, William Jeffrey Newman and his wife (“Newman”) purchased property located at 11885 Bradburn Blvd., Westminster, Colorado (the “Property” or “Westminster Property”) from Noah Properties Westminster CO, LLC. Thereafter it and leased the Property back to Noah Corporation.

2. On or about November 5, 2018, Rockwell Debt Free Properties, Inc. (“Rockwell”) purchased the Property from Newman.

3. The approximate purchase price paid by Rockwell for the Westminster Property was \$3 million.

4. At the time Rockwell purchased the Westminster Property from Newman there was approximately \$420,000 in unpaid property taxes owing on the Property to the Adams County Assessor.

5. Notwithstanding Noah Corporation apparently agreed to increase the monthly lease payment owing to Rockwell by approximately \$7,000.

6. Noah Corporation is the current tenant of the Westminster Property pursuant to a lease agreement dated October 15, 2018.

7. The Westminster TIC Holders purchased their respective interests from Rockwell in the Property between November 2018 and 2019.

8. The total purchase price for the Westminster Property by the Westminster TIC Owners from Rockwell was in excess of \$6 million.

9. There are questions and issues whether it was agreed that Newman and/or Rockwell would be obligated to pay all or part of the approximately \$420,000 property taxes in connection with the purchase and sale transaction made between them.

10. There are also questions or issues whether certain money was or should have been held in escrow to pay for the unpaid property taxes at the time of closing.

11. There are also questions whether First American adequately disclosed the unpaid property taxes.

12. There are also questions whether First American requested or agreed that it would not issue the insurance unless all property taxes were paid.

13. The large amount of unpaid property taxes is making it more difficult for the Noah Corporation to negotiate an assumption of the existing lease with the Westminster TIC Holders.

14. It will reduce the Westminster TIC Owner's proof of claims against Noah Corporation if they are able to recover the large unpaid property taxes of approximately \$420,000 from a third party.

15. The information sought by the Westminster TIC Holders is necessary to analyze their claims against the bankruptcy estate and to determine if those claims can be reduced by the recovery of payments of the unpaid property taxes from others.

16. Pursuant to Rule 2004, the Westminster TIC Holders request an order authorizing the issuance and service of a subpoena for the examination of Kirsten Parkin at First American.

17. It is Westminster TIC Holders' understanding that Kirsten Parkin handled the closings on the purchase and sale transactions for each of the Westminster TIC Holders.

18. First American is in possession of the various documents relating to the title work, the escrow transactions and the sale of title insurance regarding the Westminster Property.

19. The Westminster TIC Holders have requested information from First American but it is unwilling to provide the requested information without a subpoena.

20. The Westminster TIC Holders represent that First American will receive at least fourteen (14) days calendar notice of the examination of Kirsten Parkin and for the deadline for the production of the subpoenaed documents.

WHEREFORE, based upon the foregoing, the Westminster TIC Holders pray the Court to grant this *Ex Parte* Motion and to enter an order granting the relief requested herein. A proposed order is submitted herewith for the Court's consideration.

DATED this 28th day of August, 2019.

RAY QUINNEY & NEBEKER P.C.

/s/ Steven W. Call

Steven W. Call

Attorneys for the Westminster TIC Holders

1497157

EXHIBIT A

Topics for Rule 2004 Examination of First American Title Insurance Company

1. The lease of the Westminster Property by Newman to Noah Corporation, the amendments made to the Lease and the amounts owing thereunder, and the negotiations, communications and documents relating thereto.
2. The purchase and sale transaction between Newman and Rockwell of the Westminster Property, and the negotiations, communications and documents relating thereto.
3. The purchase and sale transactions between Rockwell and the various Westminster TIC Owners and the negotiations, communications and documents relating thereto.
4. The unpaid property taxes owing on Westminster Property by Noah Corporation during the term of the lease and at the time of closing on the purchase and sale transaction.
5. The purchase and/or sale of title insurance and/or endorsements thereto in connection with the foregoing purchase and sale transaction.
6. The escrow transaction handled by First American for each of the Westminster TIC Holders.
7. Any information regarding the acts, conduct, property and/or the liabilities and financial condition of Noah Corporation.
8. Any other matters which may affect the administration of the Debtor's estate, including but not limited to the obligation of Newman, Rockwell Debt Free Properties

EXHIBIT B

Documents to be Produced

1. All of your files and underlying documents relating to the sale and purchase of the tenant-in-common interests in connection with the property located at 11885 Bradburn Blvd., Westminster, Colorado. Documents should include all title research and escrow files. The relevant tenant-in-common interest holders are as follows:

- (o) Victor M. Szurgot Jr., as trustee of the Victor M. Szurgot Jr., Grantor Trust dated Sept 24, 1992 and Linda J. Szurgot, as trustee of the Linda J. Szurgot Grantor Trust dated Sept. 24, 1992 (15.04%);
- (p) Keith E. King (13.07%);
- (q) TYtanium 4, LLC (9.64%);
- (r) William B. Maloney (4.56%);
- (s) Douglas S. Peterson (5.33%);
- (t) The Lowell S. & Kathleen S. Peterson Intervivos Trust (5.15%);
- (u) Dana Barron (4.54%);
- (v) Geither Enterprises, Inc. (Toot, Inc.) (8.22%);
- (w) MDB Ventures LLC (3.65%);
- (x) JDB Holdings LLC (3.65%);
- (y) Kent S. Seymour and Donna G. Seymour Family Trust (9.12%);
- (z) Kathie Muhler Revocable Trust (4.24%);
- (aa) Noah Rockwell LLC (7.41%);
- (bb) Eldridge Holdings TOO LLC (6.38%).

2. All documents reflecting communications between you and Rockwell Debt-Free Properties, Inc., or its principals, concerning the sale of the tenant-in-common interests.

3. All documents in your possession or control relating to the lease of the Westminster Property to Noah Corporation including but not limited to:

- a. All versions of the Lease;

- b. All communications relating to the Lease of the Property since January 1, 2016; and
 - c. All contracts, workout agreements and all other documents relating to amounts owing under the Lease.
- 2. All closing documents relating to the sale of the Westminster Property to Rockwell Debt Free Properties, Inc. including but not limited to:
 - a. All versions of the purchase and sale agreement;
 - b. All versions of any title commitments for an owner's policy;
 - c. All versions of any title commitments for a lender's policy;
 - d. All versions of settlement statements;
 - e. All communications concerning the sale; and
 - f. All escrow agreements relating to the closing.
- 3. All closing documents relating to the sale of the Westminster Property from Rockwell Debt Free Properties, Inc. to each of the Westminster TIC Owners including but not limited :
 - a. All versions of the purchase and sale agreement;
 - b. All versions of any title commitments for an owner's policy;
 - c. All versions of any title commitments for a lender's policy;
 - d. All versions of settlement statements;
 - e. All communications concerning the sale; and
 - f. All escrow agreements relating to the closing.
- 4. All loan applications pertaining to the purchase and sale of the Property;
- 5. Copies of all appraisals or surveys performed of the Property;
- 6. All documents reflecting communications between you and Noah's Corporation or its principals, concerning the sale or lease of the Westminster Property.
- 7. All documents reflecting communications between you and Rockwell Debt Free Properties, Inc., or its principals, concerning any sale of the Westminster Property.
- 8. All documents relating to communications with First American Title Insurance Company which relate in any way to the purchase and sale transaction.
- 9. All documents reflecting communications between you and any other third person concerning the sale of the Westminster Property;
- 10. All documents including, but not limited to, financial statements, profit and loss statements, journals, ledgers relating to Noah Corporation.

11. All documents relating to each and every title search performed on the Westminster Property.
12. All documents relating to each and every title search performed on the Westminster Property regarding any assessments, tax liens, judgment liens or any other encumbrance.

Exhibit C

Definitions

The following definitions apply to all requests contained herein and in Exhibit “C”:

The term “**Debtor**” means Noah Corporation, a Utah corporation;

The term “**document**” is used in its customary broad sense and shall include, but not be limited to, every writing and record of every type and description, whether or not in the possession, custody or control of you, your agents, attorney or representatives, including, but not limited to, correspondence, including email correspondence, memoranda, interoffice communications, written notes, telegrams, minutes of directors' or committee meetings, reports, contracts, deeds, options, amendments and addenda to contracts and options, licenses, invoices, ledgers, books of account, journals, vouchers, bank checks, charge slips, account reports, receipts, working papers, charts, graphs, indexes, statistical records, stenographers' notebooks, calendars, appointment books, diaries, timesheets, data sheets, statements, papers, bids, estimates, computer printouts, tapes and records of all types, resumes, microfilms, studies, books, pamphlets, schedules, and any preliminary drafts of any of the aforementioned categories of documents, photographic prints, transparencies, moving pictures, voice recordings and every other device or medium on which or through which information of any type is transmitted, recorded or preserved and things similar to any of the foregoing, regardless of their author or origin, of any kind, however denominated.

The term “**document**” also means a copy, where the original is not in your control, Debtor's, and every copy of a document, if such copy is not an identical duplicate of the original.

The term “**communication**” means the conveyance of information between or among persons by any means.

The term “**including**” means “including but not limited to.”

The terms “**or**” and “**and**” each mean “and/or.”

The term “**person**” means, in the plural as well as in the singular, any person, agency, firm, partnership, joint venture, association, corporation or any other business entity or other form of legal entity.

The term "**property**" means the Noah's event center property located at 11885 Bradburn Blvd., Westminster, Colorado.

The term "**regarding**" means (in addition to its plain dictionary meaning), concerning, relating to, referring to, describing, evidencing, supporting, substantiating, disproving, invalidating, refuting, contradicting, negating, controverting, and/or consulting.

Instructions

The documents requested are those currently in your possession, custody, or control, actual or constructive, up to and including the date of your production, including those in the possession, custody or control of any other person acting on your behalf, including without limitation your employees, agents, accountants, auditors, attorneys, consultants or other persons.

As to each request, you are requested to produce the documents as they are kept in the ordinary course of business, or to produce them organized and labeled to correspond with the categories of documents identified below.

If you are unable to produce any document requested, you must provide written verification, sworn under penalty of perjury, that a diligent search and reasonable inquiry has been made in an effort to comply with the request. You shall also specify in such written verification whether the inability to comply is because the particular item or category never existed, has been destroyed, has been lost, misplaced or stolen, or has never been, or is no longer, in your possession, custody or control. You must also state, for each document or category of documents, the name and address of any person known or believed by you to have possession, custody or control of such document or category of documents.

If you object to producing an item or category of items, or part of an item or category of items, you are requested to (i) identify with particularity any documents which you are withholding based upon such objection, and (ii) set forth clearly the extent of and the specific ground(s) for the objection.

If privilege or work product protection is claimed as a ground for withholding one or more documents, in whole or in part, you are requested to state separately for each document:

- a. The nature of the privilege or other ground on which the document is withheld;
- b. The nature of the document (e.g., letter, memorandum, notes, disk);
- c. The date(s) it bears;
- d. The identity of each person sending it;
- e. The identity of each person to whom it was sent or who received or reviewed a copy (regardless of whether such fact is indicated on the documents);

- f. The identity of each person who prepared, sent, received or reviewed the document;
- g. A statement of the subject matter of the document;
- h. A precise description of the place where the document is kept; and
- i. The specific request to which the document withheld is responsive.

j.

CERTIFICATE OF SERVICE

I hereby certify that on the 28th day of August, 2019, I electronically filed the foregoing ***Ex Parte Motion Pursuant to Federal Rule of Bankruptcy Procedure 2004 and Local Rule 2004-1 for an Order Authorizing the Examination and Compelled Production of Documents to First American Title Insurance Company*** with the Clerk of the Court using the CM/ECF system, which sent notice of electronic filing to the ECF users registered to receive email notice/service for this case as follows:

- **Adam S. Affleck** adam-affleck@rbmn.com, andalin-bachman@rbmn.com
- **Ryan C. Cadwallader** rcadwallader@kmclaw.com, tsanders@kmclaw.com
- **Steven W. Call** scall@rqn.com, docket@rqn.com, lconterio@rqn.com
- **Kenneth L. Cannon** kcannon@djplaw.com, khughes@djplaw.com
- **Deborah Rae Chandler** dchandler@aklawfirm.com
- **Eboney Cobb**
- **P. Matthew Cox** bankruptcy_pmc@scmlaw.com
- **T. Edward Cundick** tec@clydesnow.com, laardema@clydesnow.com
- **J. Michael Ellis**
- **Mark E. Hindley** mehindley@stoel.com, rmooss@stoel.com; slcdocket@stoel.com; Dixie.colson@stoel.com
- **Penrod W. Keith** pkeith@djplaw.com, khughes@djplaw.com
- **Julie E. Kenworthy** jkenworthy@kmclaw.com
- **Reid W. Lambert** rlambert@strongandhanni.com, tlawrence@strongandhanni.com
- **Blake D. Miller** bmiller@aklawfirm.com, millermobile@gmail.com; miller.blaked@gmail.com
- **Gregory S. Moesinger** gmoesinger@kmclaw.com, tsanders@kmclaw.com
- **John T. Morgan tr** john.t.morgan@usdoj.gov, James.Gee@usdoj.gov; Lindsey.Huston@usdoj.gov
- **Nicholas J. Nieto**
- **Ellen E. Ostrow** ellen.ostrow@stoel.com, Stephanie.hore@stoel.com; docketclerk@stoel.com
- **Lenard M. Parkins**
- **Shawn T. Richards** srichards@kmclaw.com
- **Mark C. Rose** mrose@mbt-law.com, markcroselegal@gmail.com
- **Brian M. Rothschild** brothschild@parsonsbehle.com, ecf@parsonsbehle.com
- **Engels Tejeda** ejtejeda@hollandhart.com, slclitdocket@hollandhart.com, intaketeam@hollandhart.com
- **Richard C. Terry** richard@tjblawyers.com, cbcecf@yahoo.com
- **United States Trustee** USTPRegion19.SK.ECF@usdoj.gov
- **Steven T. Waterman** waterman.steven@dorsey.com, bingham.karen@dorsey.com; ventrello.ashley@dorsey.com
- **Elizabeth Weller**

/s/Lisa Conterio

1497157